

E-FILING

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AUG 09 2019

SUSAN Y. SOONG
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No:

~~1~~ C 19 04619
COMPLAINT

Peter Strojnik (Sr.),

Plaintiff,

vs.

Homestead Inn LLC dba The Homestead Hotel
Rooms & Cottages

Defendant.

1. Americans with Disabilities Act
2. Discrimination in Public Accommodations (State Law)
3. Negligence

JURY TRIAL REQUESTED

16 Plaintiff brings this action pursuant to the (1) Americans with Disabilities Act, 42
17 U.S.C. §12101 *et seq.* and corresponding regulations, 28 CFR Part 36 and Department
18 of Justice Standards for Accessible Design (“ADA”), (2) California Unruh Civil
19 Rights Act, California Civil Code § 51, 52 (“Unruh”) (3) the California Disabled
20 Persons Act (“DPA”) and (4) common law of negligence per se.

21 PARTIES

22 2. Plaintiff Peter Strojnik is a veteran and a disabled person as defined by the ADA and
DPA.
23
24 3. Plaintiff is a single man currently residing in Maricopa County, Arizona. Plaintiff is
and, at all times relevant hereto has been, legally disabled by virtue of a severe right-
25 sided neural foraminal stenosis with symptoms of femoral neuropathy, prostate cancer
26 and renal cancer, degenerative right knee and is therefore a member of a protected
27 class under the ADA and Unruh.
28

- 1 4. Plaintiff suffers from physical impairments described above which impairments
2 substantially limit his major life activities. Plaintiff walks with difficulty and pain
3 and requires compliant mobility accessible features at places of public
4 accommodation. Plaintiff's impairment is constant, but the degree of pain is episodic
5 ranging from dull and numbing pain to extreme and excruciating agony.
6
7 5. Defendant, owns, operates leases or leases to a lodging business ("Hotel") located at
 26270 Dolores Street, Carmel, CA 93923 which is a public accommodation pursuant
 to 42 U.S.C. § 12181(7)(A) and Unruh.

JURISDICTION

- 9 6. District Court has jurisdiction over this case or controversy by virtue of 28 U.S.C. §§
10 28-1331 and 42 U.S.C. § 12188 and 28 U.S.C. § 1367.

11 7. Plaintiff brings this action as a private attorney general who has been personally
12 subjected to discrimination on the basis of his disability, *see* 42 U.S.C.12188 and 28
13 CFR §36.501.

14 8. This Court has continuing subject matter jurisdiction by virtue of, *inter alia*,
15 Plaintiff's claim for equitable nominal damages.

16 9. Venue is proper pursuant to 28 U.S.C. § 1391.

17 10. The ADAAG violations in this Verified Complaint relate to barriers to Plaintiffs
18 mobility. This impairs Plaintiff's full and equal access to the Hotel which, in turn,
19 constitutes discrimination satisfying the "injury in fact" requirement of Article III of
20 the United States Constitution.

21 11. Plaintiff is deterred from visiting the Hotel based on Plaintiff's knowledge that the
22 Hotel is not ADA or State Law compliant as such compliance relates to Plaintiff's
23 disability.

24 12. Plaintiff intends to visit Defendant's Hotel at a specific time when the Defendant's
25 noncompliant Hotel becomes fully compliant with ADAAG; just as a disabled
26 individual who intends to return to a noncompliant facility suffers an imminent injury
27 from the facility's existing or imminently threatened noncompliance with the ADA, a
28 plaintiff who is deterred from patronizing a hotel suffers the ongoing actual injury of
lack of access to the Hotel.

COUNT ONE

13. Plaintiff realleges all allegations heretofore set forth.

14. By virtue of his disability, Plaintiff requires an ADA compliant lodging facility particularly applicable to his mobility, both ambulatory and wheelchair assisted.

15. Plaintiff intended to visit the Carmel area and therefore, reviewed hotel booking websites as documented in Addendum A which is by this reference incorporated herein for all purposes.

16. Plaintiff became aware that third party booking websites disclosed general availability and description of Defendant's Hotel. Third Party booking websites referenced here are more fully documented in Addendum A which is by this reference incorporated herein.

17. Third party booking websites failed to identify and describe mobility related accessibility features and guest rooms offered through its reservations service in enough detail to reasonably permit Plaintiff to assess independently whether Defendant's Hotel meets his accessibility needs as more fully documented in Addendum A.

18. Third party booking websites also failed to make reservations for accessible guest rooms available in the same manner as individuals who do not need accessible rooms.
See Addendum A.

19. Thereafter, Plaintiff became aware that Defendant's 1st party booking website failed to identify and describe mobility related accessibility features and guest rooms offered through its reservations service in enough detail to reasonably permit Plaintiff to assess independently whether Defendant's Hotel meets his accessibility needs as more fully documented. *See Addendum A.*

20. Plaintiff also became aware that Defendant's 1st party booking website failed to make reservations for accessible guest rooms available in the same manner as individuals who do not need accessible rooms. *See Addendum A.*

- 1 21. Plaintiff thereafter reviewed Defendant's online information relating to accessibility
2 or lack thereof, including in particular photographs of the amenities at the Hotel all as
3 more fully documented in Addendum A.
- 4 22. Online information relating to accessibility or lack thereof disclosed architectural
5 barriers to accessibility as more fully documented in Addendum A.
- 6 23. Defendant has violated the ADA by denying Plaintiff equal access to its public
7 accommodation on the basis of his disability as outlined above and as outlined in
8 Addendum A.
- 9 24. The ADA violations described in Addendum A relate to Plaintiff's disability and
10 interfere with Plaintiff's full and complete enjoyment of the Hotel.
- 11 25. As a result of the deficiencies described above, Plaintiff was deterred from booking a
12 room there but booked a room elsewhere.
- 13 26. The removal of accessibility barriers listed above is readily achievable.
- 14 27. As a direct and proximate result of ADA Violations, Defendant's failure to remove
15 accessibility barriers prevented Plaintiff from equal access to the Defendant's public
16 accommodation.

17 **WHEREFORE**, Plaintiff prays for all relief as follows:

- 18 A. Relief described in 42 U.S.C. §2000a – 3; and
- 19 B. Relief described in 42 U.S.C. § 12188(a) and (b) and, particularly -
- 20 C. Injunctive relief order to alter Defendant's place of public accommodation to
21 make it readily accessible to and usable by ALL individuals with disabilities;
22 and
- 23 D. Requiring the provision of an auxiliary aid or service, modification of a
24 policy, or provision of alternative methods, to the extent required by
25 Subchapter III of the ADA; and
- 26 E. Equitable nominal damages; and
- 27 F. For costs, expenses and attorney's fees; and
- 28 G. All remedies provided for in 28 C.F.R. 36.501(a) and (b).

COUNT TWO

(Violation of the California Unruh Civil Rights Act, Cal. Civ. Code §§51, 52)

28. Plaintiff realleges all allegations heretofore set forth.

29. Plaintiff intended to visit the Carmel area and spend a night there.

30. Plaintiff became aware that 3rd party booking websites disclosed general availability and description of Defendant's Hotel. 3rd Party booking website referenced here is more fully discussed in Addendum A which is by this reference incorporated herein.

31. 3rd party booking website failed to identify and describe mobility related accessibility features and guest rooms offered through its reservations service in enough detail to reasonably permit Plaintiff to assess independently whether Defendant's Hotel meets his accessibility needs as more fully disclosed in Addendum A.

32. Third party booking websites also failed to make reservations for accessible guest rooms available in the same manner as individuals who do not need accessible rooms.

Addendum A.

33. Thereafter, Plaintiff became aware that Defendant's 1st party booking website failed to identify and describe mobility related accessibility features and guest rooms offered through its reservations service in enough detail to reasonably permit Plaintiff to assess independently whether Defendant's Hotel meets his accessibility needs as more fully disclosed in Addendum A.

34. Plaintiff also became aware that Defendant's 1st party booking website failed to make reservations for accessible guest rooms available in the same manner as individuals who do not need accessible rooms. Addendum A.

35. Plaintiff subsequently declined to book a room at the Hotel.

36. Defendant has violated the Unruh by denying Plaintiff equal access to its public accommodation on the basis of his disability as outlined above.

37. Unruh provides for declaratory and monetary relief to “aggrieved persons” who suffer from discrimination on the basis of their disability.

38. Plaintiff has been damaged by the Defendant's non-compliance with Unruh and is thereby aggrieved.

1 39. Pursuant to Cal Civ. Code §52, Plaintiff is further entitled to such other relief as the
2 Court considers appropriate, including monetary damages in an amount to be proven
3 at trial, but in no event less than \$4,000.00 per encounter with each barrier to
4 accessibility.

5 40. Pursuant to Unruh, Plaintiff is entitled to costs and expenses in an amount to be proven
6 at trial.

7 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- 8 a. A Declaratory Judgment that at the commencement of this action Defendant was
9 in violation of the specific requirements of Unruh; and
- 10 b. Irrespective of Defendants “voluntary cessation” of the ADA violation, if
11 applicable, a permanent injunction pursuant to Unruh which directs Defendant to
12 take all steps necessary to bring its accommodation into full compliance with the
13 requirements set forth in the Unruh, and its implementing regulations, so that the
14 Hotel facilities are fully accessible to, and independently usable by, disabled
15 individuals, and which further directs that the Court shall retain jurisdiction for a
16 period to be determined after Defendant certifies that its facilities are fully in
17 compliance with the relevant requirements of the Unruh to ensure that Defendant
18 has adopted and is following an institutional policy that will in fact cause
19 Defendant to remain fully in compliance with the law; and
- 20 c. Irrespective of Defendants “voluntary cessation” of the ADA violation, if
21 applicable, the payment of costs of suit; and
- 22 d. Order closure of the Defendant’s place of public accommodation until Defendant
23 has fully complied with the Unruh; and
- 24 e. For damages in an amount no less than \$4,000.00 per encounter with barrier; and
- 25 f. For treble damages pursuant to Cal Civ. Code. §3345.
- 26 g. The provision of whatever other relief the Court deems just, equitable and
27 appropriate.

28

COUNT THREE

(Violation of the California Disabled Persons Act, Cal. Civ. Code §§54-54.3)

41. Plaintiff realleges all allegations heretofore set forth.

42. Defendant has violated the DPA by denying Plaintiff equal access to its public accommodation on the basis of his disability as outlined above.

43. The DPA provides for monetary relief to “aggrieved persons” who suffer from discrimination on the basis of their disability.

44. Plaintiff has been aggrieved by the Defendant's non-compliance with the DPA.

45. Pursuant to the DPA, Plaintiff is further entitled to such other relief as the Court considers appropriate, including monetary damages in an amount to be proven at trial, but in no event less than \$1,000.00. Cal. Civ. Code § 54.3.

46. Pursuant to the DPA, Plaintiff is entitled to costs in an amount to be proven at trial. Cal. Civ. Code § 54.3.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

a. A Declaratory Judgment that at the commencement of this action Defendant was in violation of the specific requirements of Unruh; and

b. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, a permanent injunction pursuant to Unruh which directs Defendant to take all steps necessary to bring its facilities into full compliance with the requirements set forth in the Unruh, and its implementing regulations, so that the facilities are fully accessible to, and independently usable by, disabled individuals as required by law, and which further directs that the Court shall retain jurisdiction for a period to be determined after Defendant certifies that its facilities are fully in compliance with the relevant requirements of the Unruh to ensure that Defendant has adopted and is following an institutional policy that will in fact cause Defendant to remain fully in compliance with the law; and

c. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, the payment of costs of suit; and

- 1 d. Order closure of the Defendant's place of public accommodation until Defendant
2 has fully complied with the DPA; and
3 e. For damages in an amount no less than \$1,000.00 per violation per encounter; and
4 f. For treble damages pursuant to Cal Civ. Code. §3345.
5 g. The provision of whatever other relief the Court deems just, equitable and
6 appropriate.

COUNT FOUR

Negligence

9 | 47. Plaintiff realleges all allegations heretofore set forth.

10 48. Defendant had a duty to Plaintiff to remove ADA accessibility barriers so that Plaintiff
11 as a disabled individual would have full and equal access to the public
12 accommodation.

49. Defendant breached this duty.

13 50. Defendant is or should be aware that, historically, society has tended to isolate and
14 segregate individuals with disabilities, and, despite some improvements, such forms
15 of discrimination against individuals with disabilities continue to be a serious and
16 pervasive social problem¹.

17 51. Defendant knowingly and intentionally participated in this historical discrimination
18 against Plaintiff, causing Plaintiff damage.

19 52. Discrimination against individuals with disabilities persists in the use and enjoyment
20 of critical public accommodations².

21 53. Defendant's knowing and intentional persistence in discrimination against Plaintiff is
22 alleged, causing Plaintiff damage.

23 54. Individuals with disabilities, including Plaintiff, continually encounter various forms
24 of discrimination, including outright intentional exclusion, the discriminatory effects
25 of architectural, overprotective rules and policies, failure to make modifications to
26 existing facilities and practices, exclusionary qualification standards and criteria,

28 | 42 U.S.C. § 12101(a)(2)

² 42 U.S.C. §12101(a)(3)

1 segregation, and relegation to lesser services, programs, activities, benefits, jobs, or
2 other opportunities³.

3 55. Defendant's knowing and intentional discrimination against Plaintiff reinforces above
4 forms of discrimination, causing Plaintiff damage.

5 56. Census data, national polls, and other studies have documented that people with
6 disabilities, as a group, occupy an inferior status in our society, and are severely
7 disadvantaged socially, vocationally, economically, and educationally⁴.

8 57. Defendant's knowing and intentional discrimination has relegated Plaintiff to an
9 inferior status in society, causing Plaintiff damage.

10 58. The Nation's proper goals regarding individuals with disabilities are to assure equality
11 of opportunity, full participation, independent living, and economic self-sufficiency
12 for such individuals⁵.

13 59. Defendant's knowing, and intentional discrimination has worked counter to our
14 Nation's goals of equality, causing Plaintiff damage.

15 60. Continued existence of unfair and unnecessary discrimination and prejudice denies
16 people with disabilities the opportunity to compete on an equal basis and to pursue
17 those opportunities for which our free society is justifiably famous, and costs the
18 United States billions of dollars in unnecessary expenses resulting from dependency
19 and nonproductivity⁶.

20 61. Defendant's knowing and intentional unfair and unnecessary discrimination against
21 Plaintiff demonstrates Defendant's knowing and intentional damage to Plaintiff.

22 62. Defendant's breach of duty caused Plaintiff damages including, without limitation,
23 the feeling of segregation, discrimination, relegation to second class citizen status the
24 pain, suffering and emotional damages inherent to discrimination and segregation and
other damages to be proven at trial.

25 63. By violating Plaintiff's civil rights, Defendant engaged in intentional, aggravated and
outrageous conduct.

26
27 ³ 42 U.S.C. §12101(a)(5)

⁴ 42 U.S.C. §12101(a)(6)

⁵ 42 U.S.C. §12101(a)(7)

⁶ 42 U.S.C. §12101(a)(8)

- 1 64. The ADA has been the law of the land since 1991, but Defendant engaged in a
2 conscious action of a reprehensible character, that is, Defendant denied Plaintiff his
3 civil rights, and cause him damage by virtue of segregation, discrimination, relegation
4 to second class citizen status the pain, suffering and emotional damages inherent to
5 discrimination and segregation and other damages to be proven at trial
6
7 65. Defendant either intended to cause injury to Plaintiff or defendant consciously
8 pursued a course of conduct knowing that it created a substantial risk of significant
9 harm to Plaintiff.
10
11 66. Defendant is liable to Plaintiff for punitive damages in an amount to be proven at trial
12 sufficient, however, to deter this Defendant and others similarly situated from
13 pursuing similar acts.

14 **WHEREFORE**, Plaintiff prays for relief as follows:

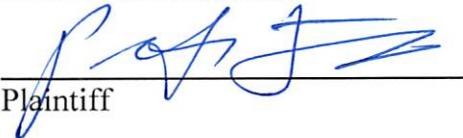
- 15 A. For finding of negligence; and
16 B. For damages in an amount to be proven at trial; and
17 C. For punitive damages to be proven at trial; and
18 D. For such other and further relief as the Court may deem just and proper.

19 **REQUEST FOR TRIAL BY JURY**

20 Plaintiff respectfully requests a trial by jury in issues triable by a jury.

21 RESPECTFULLY SUBMITTED this August 5, 2019

22 **PETER STROJNIK**

23 
24 Plaintiff

ADDENDUM A

1ST PARTY BOOKING WEBSITE - GENERAL ACCESSIBILITY INFORMATION

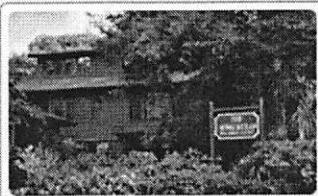
www.homesteadcarmel.com

NO ACCESSIBILITY INFORMATION

AMENITIES

Guests of the Homestead are welcome to enjoy complimentary coffee and pastries served at the Mission Ranch. They are also welcome to use the fitness facility. Tennis courts are available for a per day fee.

HOMESTEAD ACCOMMODATIONS



There are twelve guest rooms situated throughout the property. The Main House has seven rooms all remodeled in a spacious, Mission Style. The five additional rooms are located in several buildings surrounding the main house. Four of these rooms remain in the original rustic style.

Identification of Specific Barrier in Plain Language: Booking website does not identify and describe accessible features in the hotel and guest rooms in enough detail to reasonably permit Plaintiff to assess independently whether the hotel or guest room meets his accessibility needs.

The manner in which the barriers denied Plaintiff full and equal use or access, and which deter Plaintiff from visiting the Hotel: Barrier denied Plaintiff full and equal access by failing to identify and describe accessible features in the hotel and guest rooms in enough detail to reasonably permit Plaintiff to assess independently whether the hotel or guest room meets his accessibility needs.

The dates on each particular occasion on which Plaintiff encountered such barrier and which deter Plaintiff from visiting Hotel: On or about April 5-7, 2019.

1ST PARTY BOOKING WEBSITE – ROOM DESCRIPTIONS

NO ACCESSIBILITY INFORMATION

OUR ROOMS

Remodeled					
	Price*	Bed Type	Bathroom	Gas Fireplace	Additional Comments
First Floor	\$180.00	Queen	Full Bath		HDCP
Second Floor	\$170.00	Queen Bed	Full Bath		
Second Floor	\$185.00	King Bed	Full Bath		
Second Floor	\$235.00	Two Queen Beds	Full Bath	✓	
Third Floor	\$170.00	Queen Bed	Full Bath		
Third Floor	\$165.00	Queen Bed	Shower		
Outside Entrance	\$185.00	Queen Bed	Full Bath	✓	
Outside Entrance	\$235.00	Two Queen Beds	Full Bath	✓	(Separate Unit)

Original Rustic

Original Rustic	Price*	Bed Type	Bathroom	Gas Fireplace	Additional Comments
	\$99.00	Queen Bed, Shower	Shower		
	\$115.00	Queen Bed	Shower		Mini Kitchen
	\$120.00	Queen Bed	Full Bath	✓	Mini Kitchen
	\$130.00	One Queen and One Twin Bed	Full Bath		Full Kitchen, Stairway Entrance

RESERVATION AND HOTEL POLICIES	
1	Check In:
2	Check-in time is between 3:00-7:30pm. If you arrive after 7:30pm, please contact the Mission Ranch for late arrival assistance (1-800-538-8721) Must be 18 years or older in order to check-in.
3	Check Out:
4	11:00am. Late checkouts subject to a fee for up to a full day's charge.
5	Parking:
6	The Homestead has street parking only. 24-hour zones are available nearby, and we are happy to give you guidance as to where that parking is located upon check-in.
7	Deposits:
8	A one night advance deposit, per room, is required at the time of booking to guarantee the reservation.
9	Cancellation:
10	If you should need to cancel all or part of this reservation, we require 3 DAYS ADVANCE NOTICE prior to your arrival date. Cancellations must be received at least 72 hours prior to the check-in time of the date being cancelled, and a cancellation number must be issued to be eligible for a refund. Cancellations within 72 hours of arrival will result in forfeiture of the One (or first) night deposit.
11	Smoking:
12	All of our rooms and buildings are 100% non-smoking.
13	Pets:
14	Unfortunately we are unable to allow pets in the rooms.
15	Rates:
16	Rate and charges are subject to change without notice.
17	Gift Certificates:
18	If you have a gift certificate please present the original gift certificate upon check-in.
19	Occupancy:
20	All hotel rooms are based on a two person occupancy. An additional person in the room would result in a \$10 dollar charge, per person.
21	Credit/Debit Authorization:
22	Credit/Debit Cards will be authorized upon check in time for the total amount of your stay plus \$10 dollars in case there are any incidentals. The funds will be held until check out time at which point the amount incurred will be charged. Authorized amounts can take your bank or financial institution up to 30 days after your departure date to release the funds. The hotel will not be responsible for any resulting fees or charges.
23	<i>Estimated Taxes and Fees: The current 10% room tax, 1% Carmel Hotel Industry tax, and \$1.00 per night County Tour tax per night will be added to the room rate</i>

13
Identification of Specific Barrier in Plain Language: Booking website does not identify and describe accessible features in the hotel and guest rooms in enough detail to reasonably permit Plaintiff to assess independently whether the hotel or guest room meets his accessibility needs.

14
The manner in which the barriers denied Plaintiff full and equal use or access, and which deter Plaintiff from visiting the Hotel: Barrier denied Plaintiff full and equal access by failing to identify and describe accessible features in the hotel and guest rooms in enough detail to reasonably permit Plaintiff to assess independently whether the hotel or guest room meets his accessibility needs.

15
The dates on each particular occasion on which Plaintiff encountered such barrier and which deter Plaintiff from visiting Hotel: On or about April 5-7, 2019.

1ST PARTY BOOKING WEBSITE – PHOTOS

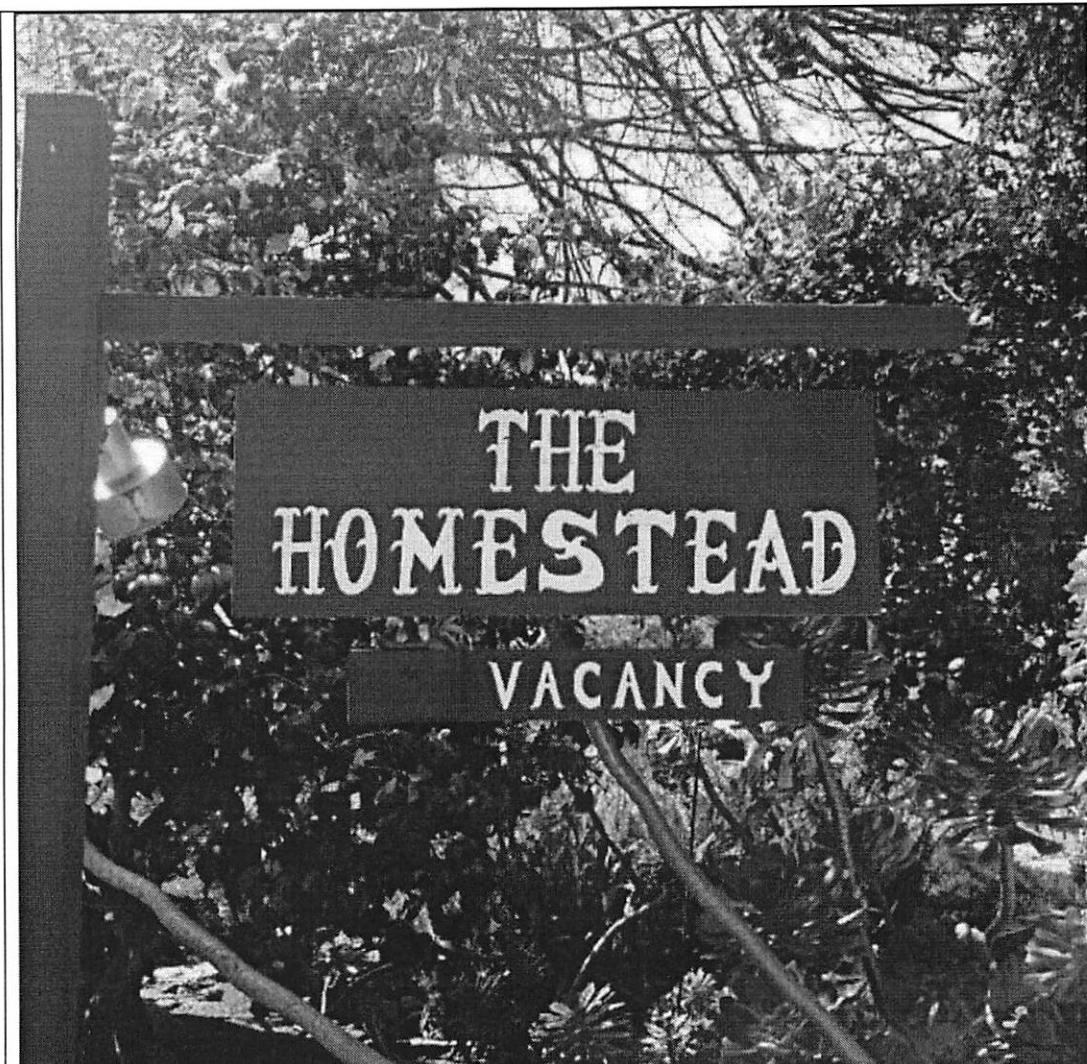
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The manner in which the barriers denied Plaintiff full and equal use or access, and which deter Plaintiff from visiting the Hotel: Barrier denied Plaintiff full and equal access by failing to identify and describe accessible features in the hotel and guest rooms in enough detail to reasonably permit Plaintiff to assess independently whether the hotel or guest room meets his accessibility needs.

23
The dates on each particular occasion on which Plaintiff encountered such barrier and which deter Plaintiff from visiting Hotel: On or about April 5-7, 2019.

PERSONAL ENCOUNTERS

27
28



Identification.

END